

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCOIS P. GIVENS,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,  
  
Defendants.

No. 2:19-cv-0017 TLN KJN P  
ORDER

Plaintiff is a former state prisoner, proceeding pro se and in forma pauperis. On September 12, 2022, plaintiff filed a request to subpoena certain documents from personnel records of nonparty Dr. Harry Newman from nonparty Dr. Bick, Director of Health Care Services for the California Correctional Health Care Services System. As discussed below, plaintiff's request is denied.

Initially, the undersigned notes that on September 9, 2022, plaintiff emailed court personnel asking to withdraw the request for subpoena. However, on August 25, 2022, plaintiff's motion to participate in electronic case filing was denied. Plaintiff is advised that he may not circumvent the requirement to file documents in paper form in this action by emailing court personnel. Any communication pertinent to this action must be filed in this case so such communications are a matter of record, and provide opposing parties notice of the

1 communication. Because opposing counsel did not receive notice of plaintiff's email, the  
2 undersigned cannot consider the email in addressing plaintiff's request. In the future, plaintiff  
3 shall refrain from emailing court personnel, and the court will not respond to any future emails.

#### 4 Applicable Law

5 Pursuant to Federal Rule of Civil Procedure 45(a)(2), a subpoena duces tecum may direct  
6 a non-party to an action to produce documents or other tangible objects for inspection. A  
7 subpoena must be personally served or it is null and void. Fed. R. Civ. P. 45(c); Gillam v. A.  
8 Shyman, Inc., 22 F.R.D. 475 (D. Alaska 1958). Because plaintiff is proceeding in forma  
9 pauperis, he is entitled to obtain personal service of an authorized subpoena duces tecum by the  
10 United States Marshal. 28 U.S.C. § 1915(d). However, this court must consider the following  
11 limitations before directing the United States Marshal to personally serve a prisoner's proposed  
12 subpoena duces tecum.

13 A subpoena duces tecum is subject to the relevance standards set forth in Federal Rule of  
14 Civil Procedure 26(b)(1) (“[p]arties may obtain discovery regarding any nonprivileged matter that  
15 is relevant to any party’s claim or defense”), and the considerations of burden and expense set  
16 forth in Federal Rules of Civil Procedure 26(b)(2) and 45(c)(1). The “Federal Rules of Civil  
17 Procedure were not intended to burden a non-party with a duty to suffer excessive or unusual  
18 expenses in order to comply with a subpoena duces tecum.” Badman v. Stark, 139 F.R.D. 601,  
19 605 (M.D. Pa. 1991) (requiring indigent plaintiff to demonstrate that he had “made provision for  
20 the costs of such discovery”) (citing Cantaline v. Raymark Industries, Inc., 103 F.R.D. 447, 450  
21 (S.D. Fla.1984)); see also United States v. Columbia Broadcasting System, Inc., 666 F.2d 364  
22 (9th Cir.1982) (court may award costs of compliance with subpoena to non-party). Non-parties  
23 are “entitled to have the benefit of this Court’s vigilance” in considering these factors. Badman,  
24 139 F.R.D. at 605. In addition, a motion authorizing service of a subpoena duces tecum must be  
25 supported by: (1) clear identification of the documents sought and from whom, and (2) a showing  
26 that the records are obtainable only through the identified third party. See, e.g., Davis v. Ramen,  
27 2010 WL 1948560, \*1 (E.D. Cal. 2010); Williams v. Adams, 2010 WL 148703, \*1 (E.D. Cal.  
28 2010).

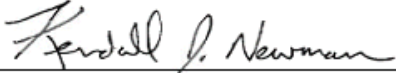
1 Discussion

2 On July 26, 2022, decedent Dr. Harry Newman was dismissed from this action with  
3 prejudice; because Dr. Newman died prior to the filing of this action, it was determined that he is  
4 not a party to this action. (ECF Nos. 50, 65.) Because Dr. Newman is not a party, plaintiff fails  
5 to demonstrate the records sought are relevant herein, and thus the burden on nonparty Dr. Bick is  
6 unjustified. Plaintiff's request is denied.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's September 9, 2022 email to court personnel is disregarded; and  
9 2. Plaintiff's request (ECF No. 75) is denied.

10 Dated: September 15, 2022

11   
12 \_\_\_\_\_  
13 KENDALL J. NEWMAN  
14 UNITED STATES MAGISTRATE JUDGE

15 /give0017.sdt  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28